

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2362 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BALKISHAN @ BALIO KANIYALAL KAHAR

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UR BHATT AGP for Respondents

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 22/07/1996

ORAL JUDGEMENT

Balkishan @ Balio Kanaiyalal Kahar, petitioner herein, by way of this petition under Article 226 of the Constitution of India, has challenged the legality and validity of the order of detention dated 1/3/96 passed against him under section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the 'PASA Act') by the Police Commissioner,

Vadodara City (hereinafter referred to as the 'detaining authority').

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on the six cases registered against the detenu by the Pani-Gate Police Station under the provisions of Bombay Prohibition Act, 5 out of them are pending trial, while one is pending at investigation stage. The detaining authority has also placed reliance on the statements of three witnesses, whose statements were recorded on 7.1.1996 and verified on 12.1.1996. Considering this material against the detenu, the detaining authority has recorded a finding that the detenu is a bootlegger within the meaning of section 2(b) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in the present petition.

Ms. Patel learned advocate for the petitioner has raised number of contentions. However, it is not necessary to deal with each of them as the petition can be disposed of on the first contention itself. Ms. Patel has submitted that the subjective satisfaction arrived at by the detaining authority that the detenu is a bootlegger is not genuine as the alleged activities of the detenu as a bootlegger do not affect adversely or are not likely to affect adversely the maintenance of the public order. In the submission of Ms. Patel the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. In support of her submission, reliance is placed by Ms. Patel on the decision of Supreme Court in the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad City and another, reported in AIR 1989 SC p. 491. In the said case, the Supreme Court has laid down as under:

It may be that the detenu is a bootlegger within the meaning of S. 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the act unless, as laid down in sub-sec. (4) of S. 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect

adversely the maintenance of public order. A person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of 'public order'.

I have gone through the statements of the witnesses in the present case and in my view, the facts in the present case are identical to the case before the Supreme Court and, therefore, the ratio laid down by the Supreme Court in the case of Piyush Kantilal Mehta (supra) is applicable to the present case. Suffice to say that the witnesses in the present case have alleged that the detenu, by indulging in use of force and violence and by illegal sale of liquor, has created an atmosphere of fear and terror by beating innocent citizens. It is also alleged that the detenu is indulging in anti-social activities and that the activities were against public order. Considering the statements of the witnesses, I am of the view that they are vague and general and no reliance can be placed on the same. In view of this observation, I am of the view that the subjective satisfaction arrived at by the detaining authority is not genuine and, therefore, the continuous detention of the detenu is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 1.3.1996 is quashed and set aside. The detenu Balkishan @ Balkrishna @ Balio Kanaiyalal Kahar is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute with no order as to costs.

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